IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 76 OF 2006

THE COMMISSIONER OF INCOME TAX, PANAJI GOA. ....Appellant

Versus

M/S KARAPURKAR AGRO LTD., PANAJI GOA. ....Respondent

Mr. S.R. Rivonkar, Advocate for the Appellant.
Mr. S.M. Singbal, Advocate for the Respondent.

Coram:- S.A.BOBDE &
N. A. BRITTO, JJ.

Date:- 12th March, 2007

P.C.:-

This is an appeal filed by the Department against the Order of the Income Tax Appellate Tribunal, Panaji Bench dated 29-5-2006. From the Order in appeal, it appears that the question before the Tribunal was pertaining to the depreciation under Chapter VI A. No depreciation had been claimed by the assessee in respect of the assessment year 2001-2002 under Chapter VI A. Admittedly, after 1-4-2002 the depreciation was made compulsory by amending Section 32 which was however not retrospective. The question therefore was whether there could be a compulsion on the assessee to claim depreciation prior to 1-4-2002. The Tribunal relied on three Judgments, namely, (1) Medley Pharmaceuticals vs ITO 71 TTJ 326(Mum.), (2) Beta Nephthol Pvt. Ltd. vs DCIT 50 TTJ 375(Indore) and (3) M/s Plastiblends India Ltd vs ITO(ITA No.4542/Mum/99 dated 10.2.2004) to hold that an assessee cannot be compelled to claim depreciation prior to the amendment of Section 32 which has been brought into force from 1-4-2002.

Mr. S. R. Rivonkar, the learned Counsel for the appellant submitted that the Department was entitled to ask for better particulars in respect of

the depreciation even after the deletion of Section 32 w.e.f. 1-4-1988. That Section enabled the Department to grant depreciation only if the assessee had given particulars. The learned Counsel submitted that because the Section is deleted the Department is still entitled to call for better particulars and thus compulsorily require the assessee to claim depreciation. This point was clearly not argued before the Tribunal and we see no reason to decide the same. Prima facie, it seems to us that the deletion of Section 34(1) has made no difference. Nothing is shown in any provision which requires the assessee to compulsorily claim depreciation after the deletion of Section 34(1). Indeed, the deletion of the requirement to furnish better particulars for claiming depreciation cannot be equated with the imposition of a compulsion on an assessee to claim depreciation. As indicated above since this point was not specifically argued before the Tribunal we have not considered appropriate to decide the point. Dismissed.

S.A.BOBDE, J.

N. A. BRITTO, J.

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